

### **REMARKS**

Claims 1-13 and 21 are pending in the application. Claims 4, 6, 15-18 and 22 were withdrawn from consideration as drawn to non-elected inventions. Claims 1-3, 5, 7-14, 19-21 and 23 were rejected. Claims 14-20, 22 and 23 have been canceled, without prejudice.

The telephone interview granted by Examiner Cantelmo on May 29, 2008 is gratefully acknowledged. During the interview, proposed amendment of claim 1 as amended by this action was discussed. It was agreed that the amendment overcame the rejections of record, but the Examiner indicated that a new search would be required. It was further agreed that this amendment after Final Rejection would be filed together with a Request for Continued Examination.

#### *Specification*

The indication that the prior specification objections have been overcome is gratefully acknowledged. The references to the various US patent applications have been checked for updating. Application No. 10/772,228 has been allowed and the issue fee has been paid, but as of the filing of this amendment the application remains pending.

#### *Claim objections and rejections under 35 U.S.C. §§112 and 101*

The indication that the prior non-art-based rejections have been overcome is gratefully acknowledged.

#### *Claim rejections under 35 U.S.C. §102 and 103*

Claims 1-5, 7-14, 19-21 and 23 were rejected under 35 U.S.C. §102(e) as being anticipated by commonly assigned US 2004/0197641 of Visco et al. (Visco). Claims 1, 3-4, 9, 14 and 19 were rejected under 35 U.S.C. §102(b) as being anticipated by JP 55-081471 A (JP '471). Claims 2, 7 and 10-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over JP '471 in view of US 5,314,765 to Bates (Bates '765). Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over JP '471 in view of US 3,976,509 to Tsai (Tsai). Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over JP '471 in view of Bates, and further in view of US 6,485,622 to Fu (Fu).

Independent claim 1, as currently amended, recites:

An electrochemical cell, comprising:

an anode comprising a first solid state lithium metal layer and a second solid state lithium metal layer and having a thin layer of Ag, Al, Sn or other Li alloy-forming metal interposed between the first and second lithium layers;

a cathode structure comprising an electronically conductive component, an ionically conductive component, and a fluid oxidant;

an ionically conductive protective membrane on the first surface of the anode, the membrane comprising,

one or more materials configured to provide a first surface chemically compatible with the active metal of the anode in contact with the anode, and a second surface substantially impervious to and chemically compatible with the cathode structure and in contact with the cathode structure.

Support for this amendment can be found, for example in the first paragraph of page 7 and the paragraph bridging pages 17 and 18 of the application.

It is respectfully submitted that none of the cited references, alone or in combination, teaches or suggests the invention recited in amended claim 1. The other pending claims depend directly or indirectly from independent claim 1 and thus incorporate this recitation and are submitted to be patentable for at least the same reasons.

Other dependent claims have been amended to correspond with the amendments made to independent claim 1, correct dependencies, etc.

Dependent claims 15-18 and 22, previously withdrawn from consideration as directed to a non-elected species, have been canceled without prejudice since they are outside the scope of the amended independent claim 1. Withdrawn claims 4 and 6 remain pending since they are within the scope of the amended claim 1 and would be entitled to consideration if claim 1 were to be found allowable.

### *Double Patenting*

Claims 1-3, 5, 7-14, 19 and 23 are provisionally rejected on the ground of obviousness-type double patenting over claims of co-pending, commonly assigned application 10/772,157 of Visco et al. ("Visco"). This rejection is respectfully traversed.

As noted above, the Visco application, including its claims, lacks any teaching or suggestion of the renewable active metal anode recited in the amended pending claims. Accordingly, it is respectfully submitted that the presently pending claims are not rendered obvious by the claims of Visco, and withdrawal of the obviousness-type double patenting rejection on this basis is respectfully requested.

Should it be ultimately necessary, Applicants propose to file Terminal Disclaimers in one or more of these applications, as appropriate, in order to obviate any remaining obviousness-type double patenting issues prior to the conclusion of prosecution.

### *Conclusion*

Applicants believe that all pending claims are allowable and respectfully request a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below. If any additional fees are due in connection with the filing of this amendment, the Commissioner is authorized to charge such fees to Deposit Account 504480 (Order No. PLUSP038).

Respectfully submitted,  
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